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The Wolfenden Report

HOMOSEXUALITY and prostitution are two problems which have been present throughout history, in spite of all kinds of changes, religious, economic and social. No one except the most unrealistic optimist expected that the Wolfenden Committee, the publication of whose report we noted briefly last week at p. 683, would provide the answer for which mankind has been seeking. Indeed, the committee were limited in their terms of reference to considering the law and practice relating to criminal offences. This limitation is at once a source of strength and of weakness. No great controversy arises out of prostitution. So long as there are men willing to pay for sexual intercourse and women willing to be paid, there is nothing that the criminal law can do in practice except to regulate solicitation. The streets have always been the traditional and natural place for prostitutes to solicit; the practice is annoying to most people, but, if the criminal law is to be strengthened to keep prostitutes off the streets, we need be neither surprised nor shocked if other methods of advertisement are used. It has at some times and in some countries been the practice to earmark certain streets for the purposes of solicitation and to have licensed brothels. Neither of these solutions, or others similar, seems practicable in the present state of public opinion.

Homosexuality

THOUGH prostitution arouses indignation, homosexuality stirs up passions. The two doctors on the committee have made a notable contribution to the report in a short note on pp. 72–76 about the medical aspects of the subject and the possibilities of treatment. They summarise an unpublished memorandum presented to the committee which seems to us to be of immense value. If homosexuality as a condition can be successfully treated, most of the problem disappears. In our opinion this is the most fruitful field for further research and consideration. If the removal of the criminal sanctions proposed by the committee would make the task of the doctors easier, this advantage would go a long way towards offsetting any detriment, real or supposed, which such removal would bring about. This is too difficult a subject, obscured as it is by millenia of ignorance and prejudice, to pronounce on hastily. We are depressed by the speed with which protagonists on both sides have rushed into print. The committee took nearly three years to produce their report and at the end their major recommendation on homosexuality was agreed to with only one dissentient. The least which responsible citizens can do is to devote some time and thought to reading and understanding the report.

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Central Land Board Report, 1956–57

THE report of the Central Land Board for the financial year ended 31st March, 1957 (H.M. Stationery Office, price 1s. 3d.), shows that, by the end of the year, the number of applications for payments under Pt. I of the Town and Country Planning Act, 1954, reached 115,976, and the payments made by the board to 76,207 applicants totalled £61,808,169, including gross interest. Thirty-one thousand one hundred and sixteen applications were found to be ineffective; "nil" payments were determined in 4,882 cases and in 214 the payments amounting to £102,276 were wholly set off against payments due to the board. Thus, by 31st March, 112,419 applications, almost 97 per cent. of the number lodged, had been finally disposed of. The greatest number and amount of applications was in respect of land compulsorily acquired by or sold by agreement to public authorities, viz., 24,518 and £36,488,654. The private sale of land accounted for 22,882 applications and £17,552,935. The remainder was accounted for by applications in respect of gifts of land by persons who retained claims, development charges paid by claim holders or predecessors in title, purchases of claims and analogous and residual cases. In England and Wales 299 appeals against the board's determinations were made to the Lands Tribunal during the year, making a total of 603 since the 1954 Act began. Three hundred and eighteen appeals were withdrawn; forty-eight were heard, of which the tribunal dismissed forty-two and allowed six. In the year, 1,747 certificates of the unexpended balance of established development value were issued under s. 48 (1) of the 1954 Act and 479 certificates were issued under s. 48 (2) to public authorities acquiring land under compulsory purchase powers. The board paid £28,438 in contributions to claimants who had incurred professional fees in connection with their claims for loss of development value under ss. 58 and 59 of the Town and Country Planning Act, 1947. It also paid £40,992 in contributions towards professional fees incurred by applicants where new valuations which affected the amount of a payment under Pt. I of the Town and Country Planning Act, 1954, were necessary.

Restrictive Trade Practices

A FRESH list of agreements, it was announced on 3rd September from the office of the Registrar of Restrictive Trading Agreements, has been the subject of a direction by the Board of Trade for reference to the Restrictive Practices Court, in accordance with the board's power to give directions about the order in which proceedings should be taken. It is interesting to find television tubes, wireless valves, electric domestic cookers and woven woollen blankets, typewriters and bottled beer in the new list. This is the second list of agreements to be the subject of a direction, the first direction, made on 15th April, having included, *inter alia*, bread, flour, proprietary medicines, school milk and woollen and worsted pile carpets (see p. 350, *ante*). There are now, it is stated, nearly 200 registered agreements affected by the two lists, and notices of reference have been issued in respect of twenty agreements. The effect of the present direction is to place the agreements in the second list on the same footing as to the order of proceedings as the agreements listed in the first direction. The full new list is as follows: agricultural machinery and parts; bolts and nuts; bottled beer; cement; copper wire rods, hot rolled; dairy machinery; electric domestic cookers; electrical fractional horse power motors; electrical subsidiary power instruments, the following—ammeters and voltmeters of the dynamometer indicating type, deflectional frequency indicators, power factor indicators, rotary synchroscopes and wattmeters; electrical transformers; electronic valves, including cathode ray tubes; engineers' small tools; hand tools; industrial furnaces; kapok and kapok mixtures; phenol; photo litho reproductions; plate glass; portable pneumatic power tools; pumps; pumping plant; road rollers; sanitary goods (other than pipes) made of fireclay earthenware or vitreous china; typewriters; washed sand and gravel produced in Scotland; water tube steam boilers intended to be installed on land; woven woollen blankets (other than blankets for mechanical purposes); and registered agreements relating to the bending of plate glass and the dyeing, bleaching or finishing of products of the hosiery industry.

Ghana and the Law

WE should like to offer our congratulations to Mr. GILBERT GRANVILLE SHARP, Q.C., on his appointment, announced last week, to the Court of Appeal in Ghana, and to Mr. GEOFFREY BING, Q.C., who has been appointed Attorney-General to Ghana. We also congratulate Ghana, for both Mr. Sharp and Mr. Bing are distinguished lawyers who have been identified with movements of a liberal and progressive kind in this country. Mr. Granville Sharp was a lieutenant in the Army in France in the 1914–18 war and was wounded in the Battle of the Somme. On his return to civil life he went to Cambridge, where he became President of the Union. He was called to the Bar in 1921 and was both a busy and well-known junior and leader. His appointment recalls that a namesake of his, one Granville Sharp, has his name in history as the liberator of negro slaves in this country. Mr. Geoffrey Henry Cecil Bing, Q.C., was called to the Bar in 1934 and took silk in 1950. He became a member of the Gibraltar Bar in 1937, the Gold Coast Bar in 1950 and the Nigerian Bar in 1954. From 1945 to 1955 he was Labour member of Parliament for Hornchurch.

Road Accidents in 1956

CASUALTIES on the roads of Great Britain in 1956—more than 5,000 killed, 62,000 seriously injured and 200,000 slightly injured—showed no significant change compared with 1955. Fewer people were killed but more were injured than in the previous year. Details of the casualties are given by the Ministry of Transport and Civil Aviation and the Scottish Home Department in the annual booklet "Road Accidents, 1956," published on 4th September (H.M. Stationery Office, 6s. net). It is estimated that, despite a wet summer and two months of fuel restrictions in November and December, traffic over the year as a whole rose by 3 per cent. The number of children killed in 1956 was 6½ per cent. less than in 1955, and the total of casualties to children decreased by 3½ per cent. Compared with the corresponding months of 1955 deaths of children fell by 21½ per cent. during the "Mind that Child" campaign in September, October and November, 1956. The figures are said to reveal that vehicles are more likely to skid on wet roads in summer than in winter. Motor-cycles are particularly vulnerable. The figures also show clearly that motor-cyclists and pillion passengers wearing crash helmets are less vulnerable to fatal injury than those not doing so. According to the police, turning right carelessly and crossing road junctions without due care continue to be the two main faults of motorists and pedal cyclists involved in accidents.

PLANNING ENFORCEMENT NOTICES AGAIN

The law in disarray

Two recent decisions of the High Court have thrown the already complicated law relating to planning enforcement notices into a state of disarray. The first was *Francis* v. *Yiewsley and West Drayton U.D.C.* [1957] 2 Q.B. 136, which the writer has hitherto refrained from commenting on as it is on its way to the Court of Appeal, and the second and more important *Norris* v. *Edmonton Corporation* [1957] 3 W.L.R. 388.

Lord Goddard, C.J., in the *Edmonton* case expressed the hope that the appropriate Ministry would take notice of some of the difficulties which have arisen in the application " of this somewhat obscure Act . . . on which there are authorities which it is not easy to reconcile one with another." He also said that, being in a criminal cause or matter, the case could not go to the House of Lords. This he described as a great misfortune.

The statutory provision

The difficulties arise from ss. 23 and 24 of the Town and Country Planning Act, 1947, which have been discussed in these pages on a number of occasions, the most recent being 100 Sol. J. 625 and 643. Readers may remember that s. 23 (4) entitles a person served with an enforcement notice to appeal to the justices, who, if satisfied that " permission was granted under this Part of this Act for the development to which the notice relates, or that no such permission was required in respect thereof," must quash the notice. Section 24 (1) entitles a local planning authority to enter on land and take steps to secure compliance (other than by the discontinuance of any use of land) with the notice in default of compliance by the person responsible under the notice and to recover the cost from such person, who is expressly forbidden by the subsection to raise as a defence to any proceedings for recovery of the cost any ground on which he could have appealed to the justices. Section 24 (3) entitles a local planning authority to prosecute for failure to discontinue a use in compliance with an enforcement notice. It contains no corresponding provision to that in subs. (1) prohibiting the defendant from raising as a defence to a prosecution any ground which could have been raised on appeal under s. 23 (4), but the Divisional Court in *Perrins* v. *Perrins* [1951] 2 K.B. 414 in effect read a corresponding provision into subs. (3), so that since then it has not been possible to raise as a defence to a prosecution any such ground.

Apparent conflict of civil and criminal jurisdiction

The plaintiff Francis in the *Yiewsley and West Drayton* case escaped this particular difficulty by bringing an action for a declaration in the High Court before any prosecution took place. The enforcement notice in this case was another of the long string relating to the alleged unauthorised use of land as a caravan site, and was attacked on various grounds. McNair, J., however, found that the notice was valid in form, but that on the particular facts permission had been granted for the development, a ground which could have been raised on appeal to the justices under s. 23 (4). The plaintiff was, however, long out of time for any appeal to the justices and, if *Perrins* v. *Perrins* were applied, would have had no defence to a prosecution under s. 24 (3). Nevertheless, McNair, J., refused to read into s. 24 (3) any provision corresponding to that in s. 24 (1) restricting the defence and granted a declaration that the notice was invalid.

There thus seems to arise an illogicality between the civil and criminal jurisdictions reminiscent of the old illogicality (now obsolete) between the decision of the Court of Criminal Appeal in *R.* v. *Denyer* [1926] 2 K.B. 258, where the court held that an officer of the Motor Trade Association who wrote to a garage proprietor offering the alternative of inclusion in the stop list or paying a sum of money to the Association was guilty of blackmail, and that of the Court of Appeal in *Hardie and Lane* v. *Chilton and Others* (*No. 2*) [1928] 2 K.B. 306, where the plaintiffs who had been given a like alternative and had paid £100 out of £200 demanded then read the decision in *R.* v. *Denyer* and promptly sued the defendant members of the Association in tort for conspiracy; the court, however, refused to accept the opinion of the Court of Criminal Appeal and held that the agreement to pay in lieu of being placed on the stop list was a perfectly good agreement.

The application of *Perrins* v. *Perrins* also arose as one of the points in the *Edmonton* case, but the Divisional Court were bound by their previous decision and had to apply it. It seems clear, however, from the judgment of Slade, J., in the *Edmonton* case that, had the matter been *res integra*, he might well have come to a different conclusion and would have found himself on the side of McNair, J.

It remains to be seen how the sections are interpreted by the Court of Appeal in the *Yiewsley and West Drayton* case, but it is an unfortunate position when a person is open to a conviction before the justices, which will be upheld by the Divisional Court, on an enforcement notice which can be declared invalid under the civil jurisdiction of the High Court.

A widening of the grounds of appeal under s. 23 (4)

The main difficulty which arose in the *Edmonton* case was not, however, concerned with *Perrins* v. *Perrins* but with the precise scope of the appeal under s. 23 (4), an important point having regard to the fact that a defendant cannot raise in subsequent proceedings any grounds which he could have raised in such an appeal.

Now the Divisional Court had already decided in *Keats* v. *London County Council* [1954] 1 W.L.R. 1357 that, on a s. 23 (4) appeal, the justices must assume that the development complained of in the notice had taken place and that their only jurisdiction was to decide whether or not planning permission had been granted for it. Norris, when prosecuted by the Edmonton Corporation under s. 24 (3), sought to contend that he had not in fact carried out the development complained of. He had not, when served with the enforcement notice, appealed under s. 23 (4) and naturally relied on the decision in the *Keats* case to establish that he could not have done so on the ground that there was no development, and so should not be precluded from raising it as a defence to the s. 24 (3) prosecution.

Unfortunately for Norris, the Divisional Court decided that the *Keats* case was no longer good law; in the words of Lord Goddard, e.g., " with regard to *Keats* v. *London County Council*, my view is that it is irreconcilable with *East Riding County Council* v. *Park Estate* (*Bridlington*), *Ltd.*, and I think in effect, although their lordships did not refer to *Keats'* case in their speeches, it must be taken to be overruled by it." The passage in the *East Bridlington* case ([1957] A.C. 223) particularly relied on by Lord Goddard for saying that *Keats'* case must be taken as overruled appears in the opinion of Lord Evershed as follows: "The words in s. 23 (4), 'no such

permission was required in respect thereof,' are clearly capable of application to any case in which permission was not in truth required under the 1947 Act, whether because the development was of a kind which by the terms of the Act called for no permission or because the development, by reason of the date when it was carried out, was outside the scope of the Act altogether."

The result was that Norris was not allowed to raise as a defence to the prosecution the contention that he had not carried out the development.

The procedure to use in fighting an enforcement notice

In the light of this confusion, what is the reader to do when confronted by a client asking for advice on an enforcement notice ?

In the present state of the law, if the facts disclose—

(1) that the acts complained of are not in truth development at all for the purposes of the Act, or

(2) that the client has not in fact done what is alleged in the notice, or

(3) that, although the acts constitute development, no permission was required for them under the Act, or

(4) that, although the acts were done and constitute development as defined in the Act, they were done, or in the case of a use begun, before the 1st July, 1948, so that they were outside the Act altogether and required no permission under it, or

(5) that permission was granted,

then the client should be advised to appeal to the justices under s. 23 (4) or, if he is out of time for that and the notice is one requiring the discontinuance of a use, to follow the example of Francis and seek a declaration in the High Court declaring the notice to be invalid.

If the facts disclose that the notice itself is bad for defect in form or other non-compliance with the statutory requirements, in other words is no notice at all, then the s. 23 (4) appeal is not appropriate, but the point must be raised in defence under s. 24 or the notice be declared invalid in the High Court.

The position where the ground of attack on a notice alleging development after 1st July, 1948, is that the notice has been served out of time is a little more complicated, and some reference is necessary to the facts in both *Keats'* case and the *Edmonton* case.

The *Keats* and *Edmonton* cases

The premises concerned in *Keats'* case were on the 1st July, 1948, in residential use. Beginning in October, 1949, more than four years before the enforcement notice, a firm of builders used them for about five weeks for light industrial purposes ; they then remained empty until about the 15th February, 1950, when a firm of optical manufacturers began to use them for light industrial purposes, and continued to be used for such purposes up to the hearing. Keats was the owner. The notice complained that certain development had been carried out after 1st July, 1948, namely, beginning the use of the premises for light industrial purposes. Before the magistrate, Keats contended that the notice was out of time because the development commenced more than four years before the notice ; it appears from the report that this contention was slightly varied before the Divisional Court and that there it was contended that the only development on which the notice could bite was the use commenced by the optical manufacturers and that, as this was in the same use class as the earlier use by the builders, it was not development and no further (*sic*) permission was required. It was this contention that the court held was not a ground for the magistrate to consider on a s. 23 (4) appeal.

The enforcement notice in the other case alleged that Norris was the occupier of the premises concerned and that these had been developed on or about October, 1955, by their use for car breaking, car repairs and the sale of cars. It required Norris to discontinue this use and to restore the premises to their previous use as a domestic yard to a dwelling-house. Before the justices on the s. 24 (3) prosecution, Norris sought to call evidence as to the use of the premises before he became the occupier with a view to showing that his use of them was not a material change and therefore not development. The justices would not entertain this, and the Divisional Court held that they were right because this point could have been a ground for a s. 23 (4) appeal. It does not appear from the report whether the car-breaking use started before or after 1st July, 1948.

Now it seems clear to the writer that, if a material change of the use of any premises took place after 1st July, 1948, but more than four years before the service of the enforcement notice and the new use has been carried on continuously up to the service of the notice, the correct method of challenging the notice is not by a s. 23 (4) appeal but by defending a s. 24 (3) prosecution or else seeking a declaration in the High Court that the notice is invalid. This is because, the development having taken place after 1st July, 1948, permission under the 1947 Act was certainly required and equally certainly the lapse of four years does not operate to authorise the new use by the grant of any deemed planning permission.

A peculiarity of *Keats'* case was that the change of use seems to have been treated as having taken place twice, once in October, 1949, and once in February, 1950, but the second change was regarded as in the same use class as the first so that it was not development. It seems to the writer, however, that either the change should have been regarded as carried out once and for all in October, 1949, in which case Keats could successfully have defended a s. 24 (3) prosecution, or that the October, 1949, development should have been disregarded entirely, in which case Keats would have had no defence at all. The reason why the writer makes the latter suggestion is that, when the offending use ceased at the expiration of the five weeks from October, 1949, it must surely have faded from the picture altogether leaving only the authorised use, namely, the residential use, in being ; if only a limited period planning permission had been granted for the industrial use for the five weeks clearly the start of the industrial use in 1950 would have been new development for which planning permission was required, and the fact that there was no planning permission at all for the five weeks should hardly put it in a better position. When the use ceased at the end of the five weeks, the local planning authority could hardly have served an enforcement notice requiring the discontinuance of a use which had already discontinued itself, and it would place them in a very difficult position if any fleeting unauthorised use were to legitimise any subsequent fresh start of the use four years or more later.

It must, of course, be appreciated that the Divisional Court in *Keats'* case did not decide on the merits of his contention that there was no development ; as he was precluded from raising the point in the appeal, he could have raised it on any subsequent prosecution and its merits would have been considered then.

A peculiarity in the *Edmonton* case was that the enforcement notice itself complained of a change of use in October,

1955, when the change had obviously taken place earlier. If the change had taken place before 1st July, 1948, as seems probable, Norris could clearly have succeeded in a s. 23 (4) appeal and would thus have been properly precluded from raising the point when prosecuted; if it took place after this date but more than four years before the service of the notice he could not have succeeded on the s. 23 (4) appeal and, therefore, should not have been precluded from raising the point in defence to the prosecution. As it was, he chose to argue that there was no development as alleged, a point which it was held he could have raised on an appeal and therefore could not raise in defence to the prosecution.

Further advice on procedure

What is the moral of all this for the reader whose client brings in a notice relating to a material change of use carried out after 1st July, 1948, but more than four years before the service of the notice?

First, if there is still time to appeal, the client should be advised to appeal under s. 23 (4) if, owing to some peculiarity in the facts such as occurred in the *Keats* and *Edmonton* cases, there is some reason for contending that there has in truth been no development as alleged. If there is no such reason, but the contention is merely that the change of use took place more than four years before the notice, it does not seem that such an appeal is the appropriate remedy, but that the contention should be raised in defence to a prosecution or in an action for a declaration that the notice is invalid; nevertheless, in the present confused state of the law, the writer would advise that a s. 23 (4) appeal should be made even in such a case, for it is better to be safe than sorry, and, even if it is held that the contention cannot succeed on the appeal, though some costs will have been thrown away, the contention has been safeguarded for use in defence to any subsequent prosecution.

Second, if the time for appeal has expired, then he should advise the client to defend a prosecution, not obviously on the ground that there has been no development, but on the ground that the use was started more than four years ago, or to seek a declaration in the High Court that the notice is invalid either on the latter ground or, while the *Yiewsley and West Drayton* case stands, on the former as well.

Caravans again: *Taylor* v. *Eton R.D.C.*

In conclusion, a brief reference may be made to a recent case where the use started as it were partly before and partly after 1st July, 1948. This is *Taylor* v. *Eton R.D.C.*, reported at 170 Estates Gazette 74. Here Taylor had a 3½-acre field on which stood three caravans before 1st July, 1948; after this date there was an influx until the total reached twenty. The enforcement notice required the removal of all and was upheld by the justices on a s. 23 (4) appeal and by the Appeal Committee of the Buckinghamshire Quarter Sessions. The Divisional Court, however, varied the notice so as to require the removal of all the caravans in excess of three, and the appellant was allowed a further twenty-eight days for removal. This case was somewhat similar to that of *Brookes* v. *Flintshire County Council* (1956), 6 P. & C.R. 140, discussed at 100 Sol. J. 626 and 643, though in the latter case the Divisional Court decided that a geographical and not a numerical limitation should be observed.

R. N. D. H.

THE MAINTENANCE AGREEMENTS ACT, 1957

This Act, as its name suggests, relates to maintenance agreements between spouses, provided that the agreements are entered into in writing. It applies to these agreements whether they were made before or after the commencement of the Act (17th August, 1957), whether or not the agreements contain financial provisions and whether or not they were made during the marriage or after its dissolution or annulment.

Without statistics, it is impossible to do more than hazard a guess that there must be thousands of such agreements in existence to-day and that every solicitor must have been asked on a number of occasions to tender advice on them.

Thus the Act, though short, is of practical importance. But it is also of technical importance, for it creates an important change in the law of consideration and contract; it will now be possible to enter into a contract to maintain a spouse (or ex-spouse) with no consideration and with no other requirement than that the agreement should be in writing.

For the purpose of this article the Act can readily be divided into two parts. In the first place, it amends and alters existing law and, in the second place, it makes new law by tidying up a corner of existing law.

Alteration of existing law

(In this article references are made to the husband as the provider and to the wife as the receiver of maintenance; the Act would apply equally to cases in which the positions were reversed.)

Section 1 (2) of the Act provides that a maintenance agreement which " includes a provision purporting to restrict any right to apply to a court " for maintenance shall be enforceable, though that provision is void, and though the agreement is supported by no consideration other than that void provision. To this the Act contains two provisos of a transitional nature: (i) where the party chargeable under the agreement dies before 17th August, 1957, s. 1 (2) will only apply if his personal representatives have, roughly speaking, four-fifths of the deceased's estate in hand after providing for funeral and testamentary expenses and for debts; (ii) no claim can be made by virtue of s. 1 (2) in respect of payments which fell due before 17th August, 1957.

To appreciate the importance of s. 1 (2), and the reason why such a provision was enacted, one has to consider the law as it stood before the coming into operation of this Act. As has been said so often elsewhere, the Act amends the law as it was established by the *Hyman* and *Bennett* type of case (see *infra*). In terms of elementary law, and at the risk of over-simplification, a maintenance agreement is a type of contract, and as such needs to be supported by consideration. If the supporting consideration is bad the agreement is unenforceable. To seek to overcome this difficulty by covenanting by deed proved in practice to be not much more effective, and for the reasons that follow. Although a straightforward covenant in a deed by a husband to pay maintenance to his wife is enforceable, very few husbands were satisfied with such agreements; they required mutuality in the form of cross-covenants by the wife. If the deed

contains provisions which are bad as being contrary to public policy, the deed will not be enforced in a court of law and the parties will be thrown back on to the contract in writing. (In *Bennett* v. *Bennett* [1952] 1 K.B. 249 no distinction was made between enforcing the deed and enforcing the contract in writing; rather was the deed treated as an example of the exception referred to in Halsbury's Laws of England, 3rd ed., vol. 11, p. 325, namely, as a case of a deed containing a covenant that needs to be supported by consideration.) Thus, whether the deed is unenforceable and the parties are thrown back on to the contract in writing that needs to be supported by consideration, or whether the deed is of a species which needs to be supported in respect of certain covenants by consideration, in either case if there is no valid consideration to support the husband's promise to pay maintenance, that promise is unenforceable in a court of law.

Although there may be a distinction between separation and maintenance agreements (*per* Somervell, L.J., in *Bennett* v. *Bennett*, at p. 259), they both stem from similar causes, and it is worth while glancing at this question of good consideration in perspective. There was a time when it was thought that an agreement to separate in the future was founded on good consideration, for each spouse gave up his right to *consortium*. But this was no sooner tested than the courts held it to be fallacious (see *H.* v. *W.* (1857), 3 K. & J. 382). On the other hand, an agreement for immediate separation is founded on good consideration. A bare maintenance agreement under seal is enforceable, but is found in practice to be wanting; the husband wants covenants from his wife, and in particular covenants not to bring matrimonial or maintenance proceedings against him. The wide recognition of this can be seen from famous precedents: see, e.g., the Encyclopædia of Forms and Precedents, 3rd ed., vol. VII, pp. 311 and 319. Such a covenant is understandable, for the purpose of agreeing out of court was to keep the courts at bay. In many cases parties are free to do this (e.g., commercial arbitration cases), but in matrimonial cases the courts considered the matter not to be a private matter, purely *inter partes*, but to involve public matters arising out of the matrimonial status of the parties.

In *Hyman* v. *Hyman* [1929] A.C. 601, after reviewing older cases, the House of Lords held that a covenant not to apply to the courts for maintenance was unenforceable. From this decision it followed that if the consideration for the husband's payments was bad, and there was no other consideration, then the husband's obligation to pay maintenance became unenforceable, and this was in fact held to be the law in *Bennett* v. *Bennett*, *supra*. The next step was again one that can, at any rate in retrospect, be said to be a natural consequence of *Hyman* v. *Hyman*. In *Goodinson* v. *Goodinson* [1954] 2 Q.B. 118, the court held that if the agreement to pay maintenance was supported by other consideration which was good, and the unenforceable and the good consideration could be separated from each other, then the maintenance provisions were enforceable, because after striking out the void consideration there remained good consideration.

Such then, briefly, was the law before the passing of this Act. Many solicitors must have had to advise their clients that separation or maintenance agreements to which they were parties were not worth the paper they were written on; they were supported by consideration which was void. Now they may have to reconsider that advice, for under this Act the court will ignore the offending consideration and enforce the agreement to pay. But it should be noted that the Act only applies to cases in which the void consideration is an undertaking not to apply to the courts "for an order containing financial arrangements"; it does not validate agreements which are based on consideration which is void for some other reason.

Variation of agreements by the courts

The Act (s. 1 (3)) gives to the High Court a new weapon, that to vary the amounts which are payable under maintenance agreements provided that they are not made more than six months after the dissolution or annulment of the marriage. It also gives this power in a more limited form (see s. 1 (4)) to magistrates' courts, e.g., where the parties are both resident in England and one of them resides within the petty sessions area. The courts have long had power to award maintenance even though the wife was entitled, and in fact received it, under a maintenance agreement. Indeed, in *Tulip* v. *Tulip* [1951] P. 378, the diligent payment by the husband of maintenance under an agreement was held not to be a bar to the wife claiming maintenance on the footing that her husband had been guilty of wilful neglect to provide reasonable maintenance for her within the meaning of s. 5 of the Law Reform (Miscellaneous Provisions) Act, 1949.

One slight practical difficulty was that if the court ignored the maintenance agreement payments it might order the husband to pay what, taken with his maintenance agreement obligations, would be an unreasonable sum. If, as generally it did, it took account of the maintenance payments under the agreement, and the husband ceased to make these, a further application to the court was necessary. Under the Act the court now has power to vary the payments which are provided for under the maintenance agreement having regard to all the circumstances existing at the time of the application, and in particular, in order to secure "that the agreement contains proper financial arrangements with respect to any child of the marriage," a provision which could have far-reaching practical consequences. It has been suggested that such circumstance will arise out of the changes in the value of money, in which case many old maintenance agreements will be coming forward for reconsideration.

The courts' new power of altering sums payable under maintenance agreements will be of particular assistance to the divorced person who is outside s. 19 of the Matrimonial Causes Act, 1950, i.e., has made no application for maintenance because she relied on a maintenance agreement.

After death

Another novelty introduced by the Act relates to the position after the death of a party to the maintenance agreement. Where the maintenance agreement provides for payments to continue after the death of a party and a party to the agreement dies after 17th August, 1957, the surviving party may apply to the court for a variation of the amount of maintenance due under the agreement provided he applies within the prescribed time limit of six months from the date when letters of representation of the deceased's estate were first taken out. On consideration, it will be seen that this provision is a natural consequence of the power which is given to the courts to vary the amounts payable under maintenance agreements *inter vivos*. To make the survivor's power to apply for variation after death effective, the survivor is to be deemed to be a person interested in the deceased's estate for the purposes of s. 162 (1) of the Supreme Court of Judicature (Consolidation) Act, 1925, and thus a person who can in certain circumstances apply for letters of administration of the estate.

J. H. H.

Common Law Commentary

A JOB FOR LIFE

AN advertisement in an evening paper invited applications for posts of which the material matter was: "Subject to a probationary period, appointments will be *permanent and pensionable* . . .", and the question that arose for decision in a legal battle was whether the person appointed who successfully survived the probationary period, to be taken on the staff, was irremovable, i.e., whether a notice purporting to dismiss other than for misconduct or inefficiency could be ignored.

"That an advertisement offers permanent employment does not," said Lord Goddard when the case came before the House of Lords, "in my opinion, mean thereby that employment for life is offered." Later his lordship said, "Nor do I think that because a person is offered pensionable employment the employer thereby necessarily engages to retain the employee in his service long enough to enable him to earn a pension."

Though the House was divided on the true construction of the contract before them, all the learned law lords approached the construction on the basis that these words in the advertisement did not, of themselves, give the employee a truly permanent post. The fact that she succeeded arose out of the terms of the conditions of employment which were brought to her notice during the probationary period. But the advertisement was not without weight: it was regarded as confirmatory evidence of the intention which the majority of their lordships thought existed between the parties.

Briefly the facts of the case (*McClelland* v. *N.I. General Health Services Board* [1957] 1 W.L.R. 594; *ante*, p. 355) were that, having read the advertisement, and having applied and been appointed for the probationary period, the plaintiff served her term of probation and received, during that term, a document setting out the terms of service applicable to the permanent staff. These terms included terms dealing with dismissal for misconduct (a wholly unnecessary provision) and for inefficiency, with an alternative of reduction in rank (cl. 12). It also provided that permanent officers who wished to leave were to give one month's notice.

In the court of first instance it was considered that the plaintiff was in effect a civil servant (the employer being the Northern Ireland General Health Services Board), but the Court of Appeal, whilst dismissing the appeal, held that the plaintiff was not a civil servant since the employer did not represent the Crown. Nevertheless, in her successful appeal to the House of Lords it was held by one law lord that she had the *security* of a civil servant (see reference to this below). The majority of the Court of Appeal thought that, as a matter of construction, the term covering dismissal did not exclude the power to imply a right to dismiss on reasonable notice. Two of the law lords in the House of Lords thought the same, but those two were in a minority.

General hiring

Where a man is not employed for a fixed period his employment is presumed to be a general hiring. But the presumption of a general hiring is easily rebutted and where it is rebutted the employer may dismiss by reasonable notice. The law relating to general hiring is not quite fully set out in the report where it is referred to (p. 599) since it says that in the case of a general hiring reasonable notice may be given. But the true position is that a general hiring is for a year and expires by effluxion of time unless renewed (*Beeston* v. *Collyer* (1827), 4 Bing. 309) or unless express provision for notice is made (*R.* v. *St. Andrew, Pershore* (1828), 8 B. & C. 679).

In other cases reasonable notice may be given, subject to the true construction of any express terms. In the instant case the clause dealing with dismissal was thought by the majority of the court to be sufficiently comprehensive to exclude any other provision for dismissal, and, in view of the fact that the advertisement referred to "permanent and pensionable" employment, that advertisement was confirmation of the construction.

In an earlier case (*Salt* v. *Power Plant Co., Ltd.* [1936] 3 All E.R. 322), it was held that "permanent employment" meant employment for life.

Position of civil servants

The civil servant is the more common instance of permanent employment, notwithstanding that he serves at the pleasure of the Crown. Lord Goddard mentioned civil servants in his concluding words in this case. His lordship said: "Remembering the terms of the advertisement in conjunction with the provisions of Condition 12, I think the fair conclusion is that the board offered and the appellant accepted employment on terms as secure as is in fact enjoyed by civil servants. Although a civil servant, as is well known, is employed at the pleasure of the Crown and can be dismissed at any moment, in fact once he has qualified by examination or probation and is taken on the establishment he is secure in his employment until he reaches the retiring age, apart, of course, from misconduct or complete inefficiency . . ."

Want of reciprocity

Finally we may mention a point of interest and argument in this case arising out of the express provision whereby the employee could give one month's notice. It was argued that there was an absence of reciprocity if the servant could not be dismissed. Lord Evershed deals with this point by saying that the argument begs the very question for decision. "As a matter of practical common sense," said his lordship, "the situations of the employer board and that of one of its servants are very different. The loss or damage to the board occasioned by the departure of one of its servants would, save in very exceptional circumstances, be negligible. To a servant, certainly a servant in the position of the appellant, the security of employment with the board for the period of working life is of immense value." This statement clearly regards as legally acceptable an arrangement in which the notice on one side is of a different length from that on the other side.

Notwithstanding the many differences of opinion among the judges before whom the case came, the key point seems to be that it would have been a simple matter for the board to have inserted an express provision for dismissal if that was intended. It seems that, if it had been included, it would not have been regarded as incompatible with the terms of the advertisement. This is another of those cases where a fuller drafting of the terms of service might have prevented litigation.

L. W. M.

Mr. M. J. ABBOTT, Judge of the High Court of Lagos, has been appointed a Federal Judge of the Federal Supreme Court, Nigeria.

American Bar Association Conference

EDUCATION AND TRAINING

In his paper on "Education for the English Bar" delivered to the American Bar Association, Mr. R. E. Megarry, Q.C., as he pointed out, left "matters of opinion and comment for oral discussion." A similar factual approach characterised the paper on "The Training of Solicitors in England," given by the Principal of The Law Society's School, Mr. E. R. Dew.

Whether in the field of "education" or of "training" figures quoted in each paper showed the severity of the qualifying examinations. Mr. Megarry gave, amongst other percentages, those for last year's three Bar Final Examinations where the lowest percentage of failures (excluding conditional passes) was 63 per cent. Mr. Dew considered that the Solicitors' Final "in its present form is a very formidable examination indeed," averaging a nearly 50 per cent. failure standard. Further, of a possible 120 candidates sitting for the separate, optional Honours Examination, probably only some thirty attain a standard sufficient to have their papers looked at with perhaps twenty actually attaining Honours.

Such figures may perhaps be looked at in two ways. They impress as to the high standard required, but they may also tend to raise a question as to whether such a percentage (particularly in the case of the Solicitors' Final) does not also cast doubts on legal education methods when it is necessary to "plough" so many at so late a stage leaving them to "cram" for a succeeding examination.

From this point of view (and different considerations affect the Solicitors' Honours Examination) there is added interest in Mr. Dew's concluding remark that "the Council of The Law Society now have under active consideration the whole question of the training of future solicitors and it is possible that some radical changes may be made."

He did not elaborate on this cryptic remark but two points of detail appear in his paper. Firstly (but subject now to the Articled Clerks Regulations, 1957), while setting a very high standard for its Final, the Society allows its Preliminary Examination to be of a standard lower than many general examinations for admission to universities, thereby making the standard for entry into a learned profession less than the minimum for a university. The second aspect relates to law school attendance. Mr. Dew pointed out that the old method of attendance at the Society's School (which corresponded with that now prevailing in the existing provincial law schools) often meant that the student "failed to get the best use from his practical work and from his Law School and which at the most provided instruction for the Intermediate Examination." Mr. Dew clearly regards that as unsatisfactory: the system continues, it would seem, for a not inconsiderable number of students—though may it not sometimes have the possible merit of comparatively small classes?

An additional point which might possibly have been more fully dealt with (particularly in view of the different method adopted by the Bar) is the actual purpose of the obligatory law school attendance: Whether or not it is merely to enable the student to pass his examinations, or if additionally, the courses and tuition are designed to give a wider outlook on the law than that gained by alleged "cramming," or whether it is to raise in some way the standard of the profession, and (whatever the objective or combination of objectives) some estimate of the degree of success achieved.

Another aspect of the prospective solicitor's training is the gaining of practical instruction. This, as Mr. Dew put it, is by being at first entrusted "to the care of some experienced managing clerk, who will have him constantly with him while he deals with matters," until the time comes when "the principal will probably have the (articled) clerk with him when he gives advice to his clients." Consideration as to how far in the rush of modern practice the objective is achieved for the average articled clerk was no doubt outside the scope of the paper. Mr. Megarry in concluding his comprehensive review relative to the Bar, had the opportunity of drawing attention to the Council of Legal Education's Post Final Practical Courses. They commenced in July, 1951, and concerning them he said: "This successful exercise in the teaching of skills represents England's first sustained effort in organised group instruction in the professional techniques of the law."

With these two papers by such recognised authorities, the American Bar Association members must have gained a considerable insight into the requirements necessary to qualify for whichever branch of the profession the student wishes to follow, and also ample matter for discussion, comment and consideration.

G. W. I.

Mr. T. Curtis, assistant solicitor to Lewisham Metropolitan Borough Council, has been appointed conveyancing assistant solicitor, Town Clerk's Department, Croydon, in succession to Mr. L. L. Gosney.

Mr. O. Jibowu, Federal Justice of the Federal Supreme Court of Nigeria, has been appointed Chief Justice of the High Courts of Lagos and the Southern Cameroons, in succession to the late Sir Maxime de Comarmond.

Sir Kenneth K. O'Connor, Q.C., M.C., Chief Justice of Kenya, has been appointed President of the Court of Appeal for Eastern Africa in succession to Sir Newnham Arthur Worley, who is retiring.

Mr. Mitchell Nevins has been appointed clerk to Chesterfield County Magistrates in succession to Mr. Aubrey Cook.

Mr. Albert Preece, the assistant clerk to Chesterfield County Magistrates, will be retiring at the end of September after 49 years' association with the court.

Mr. Maurice Arthur Ricketts, solicitor, of Slough, was married recently to Miss Thelma Bannister, of Slough.

It has been announced that His Honour Judge Rewcastle, Q.C., will cease to sit as Additional Judge at the West London County Court.

The districts of the Brentwood, Grays Thurrock and Southend County Courts will cease to be part of Circuit 58 and will comprise a new Circuit, No. 62.

His Honour Judge Bassett, Q.C., will cease to be one of the Judges for the districts of the Brentwood, Grays Thurrock and Southend County Courts.

The districts of the Bromley, East Grinstead, Gravesend, Sevenoaks, Tonbridge and Tunbridge Wells County Courts will cease to be part of Circuit 56 and will comprise a new circuit, No. 63.

His Honour Judge Rice-Jones will cease to be one of the Judges for the districts of the Bromley, East Grinstead, Gravesend, Sevenoaks, Tonbridge and Tunbridge Wells County Courts.

His Honour Judge Glazebrook will cease to be one of the Judges for the district of the Croydon County Court.

A Conveyancer's Diary

HOWE v. DARTMOUTH

In its relation to leasehold property, the area in which the rule in *Howe* v. *Earl of Dartmouth* (1802), 7 Ves. 137, operates has been greatly circumscribed by the 1925 legislation. This was shown in *Re Brookes* [1926] W.N. 93 and *Re Berton* [1939] Ch. 200, and the process is apparently a continuing one—see now *Re Gough* [1957] 2 W.L.R. 961; and p. 409, *ante*.

Re Brookes

In *Re Brookes*, a testator who died before 1926 gave his residuary estate, which included leaseholds, to his trustees upon trust for sale, with power to postpone sale, and to hold the proceeds in trust for certain persons in succession. The trustees in exercise of this power postponed the sale of the leaseholds. Lawrence, J., held that, as from the coming into operation of the 1925 legislation, the tenant for life became entitled to receive the whole of the net income of the leaseholds, and not merely the amount permitted by the rule in *Howe* v. *Dartmouth*, viz., the equivalent of 4 per cent. on the value of the property at the death of the testator.

Now the rule has always yielded to an indication of a contrary intention by the testator, either express or implied, and a power to retain the property in question in the state in which it was at the testator's death has since *Gray* v. *Siggers* (1880), 15 Ch. D. 74, been held to take the case out of the rule. The will in *Re Brookes* contained a power to postpone sale. But Lawrence, J., did not rest his decision on that ground; he rested it on the provisions of s. 28 (2) of the Law of Property Act, 1925. It is there provided that, subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale shall be paid or applied (with an exception immaterial for the present purpose) in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested. "Land" is defined by s. 205 (1) (ix) of the Act to include land of any tenure. Having regard to these provisions, the principle of *Howe* v. *Dartmouth* was held to be no longer applicable to leaseholds forming part of a residue held on trust for persons in succession if the trusts included an express trust for sale.

Re Berton

This decision was taken a step further in *Re Berton*. Here, a testator who died in 1937 directed his trustees to pay the income of his residuary estate during the lifetime of his widow to certain persons in *aliquot* shares. This direction operated as a gift of the income to "two or more persons in undivided shares" within the meaning of s. 34 (3) of the Law of Property Act, 1925, with the result that it took effect as a gift to the trustees upon the statutory trusts. Accordingly, Clauson, J., said, the direction had to be read as if it created a trust for sale, so far as it related to the leaseholds, and further, in view of s. 25 of the Act, a power to postpone the sale of the leaseholds had to be implied. Finally, Clauson, J., referred to s. 28 (2), which was the provision relied upon in *Re Brookes*, and reading all these provisions together he held himself bound to treat the case before him as being on all fours with the decision in *Re Brookes*. The result of this decision was that, so far as the application of the rule in *Howe* v. *Dartmouth* is concerned, there is no difference between an express trust for sale coupled with an express power to postpone sale and a trust for sale imposed by statute coupled with a power to postpone sale also given by statute.

The reference to s. 28 (2) in this decision follows immediately after that to s. 25, and it is in the cumulative effect of these two provisions that the *ratio decidendi* of *Re Berton* lies. But for practical purposes it is immaterial whether reliance is placed on either one of these provisions, or on both: s. 28 (2) will apply to almost any case where a residuary estate of mixed realty and personalty or of personalty is held on trust for sale and on trust as to the proceeds of sale for persons in succession, and that, on the authority of these two cases, will be sufficient to exclude the application of the rule in *Howe* v. *Dartmouth* so far as leaseholds are concerned, whether the trust for sale arises expressly or under the statutory trusts.

Re Gough

The case of *Re Gough* was different from these two cases in that there was initially no trust for sale. The testator, who died in 1935, by his will left the residue of his estate to his wife in trust for life, and after her death (in the events which happened) in trust as to the income thereof for various persons in undivided shares, with an ultimate trust of capital which does not concern us. Vaisey, J., construed the trust in favour of the testator's widow as one which created a settlement within the Settled Land Act, 1925, with the result that "no trust for sale can in the circumstances be implied." But, in fact, the widow had died before the date of the application, and as after her death the residuary estate was held in trust to pay the income thereof in undivided shares among a class of persons, *prima facie* the case would appear to have been on all fours with *Re Berton*, and the application of the rule in *Howe* v. *Dartmouth* in relation to the leasehold property which was the principal item in the testator's estate was excluded on the same grounds, viz., either s. 28 (2) or s. 25 of the Law of Property Act, 1925, or both these provisions taken together.

But treating the case as one in which the leasehold property was settled land, Vaisey, J., reached the same conclusion on the ground (among others) that "the rule . . . can no longer apply to leaseholds held for a term exceeding sixty years, they being now authorised investments under s. 73 (1) (xi) of the Settled Land Act, 1925. . . ." The leasehold property which was substantially the subject of this application was held for a term of ninety-nine years from a date in May, 1902, so that at the date of the testator's death the term had more than sixty years to run.

This is a novel ground for excluding the rule in *Howe* v. *Dartmouth*. It is true that in the ordinary case of a tenant for life of settled land the application of the rule would usually be in any event excluded, because in such a case it is usually the clear intention of the testator that the property should be enjoyed by the beneficiary *in specie*, and where that is the intention the rule does not apply (see, e.g., Underhill's Law of Trusts and Trustees, 10th ed., pp. 275–76). But the power to invest in long leaseholds is, in certain circumstances, available to trustees holding land upon trust for sale, by virtue of s. 28 (1) of the Law of Property Act, 1925 (*Re Wellsted's Trusts* [1949] Ch. 296), and in that

case this new ground for excluding the application of the rule in *Howe* v. *Dartmouth* may become important if the grounds upon which *Re Brookes* and *Re Berton* were respectively decided are not applicable by reason of some contrary indication in the testator's will. In a roundabout way, therefore, it is once again in the case of a trust for sale, either expressly created or arising under the statute, that the Law of Property Act, 1925, may be found to have restricted the circumstances in which the rule in *Howe* v. *Dartmouth* may be applied.

"A B C"

Landlord and Tenant Notebook

"RESIDING WITH"

SOME time ago, two visitors to Britain stepped out of a car which had stopped outside Canterbury Cathedral; and one of them, having glanced at the building, exclaimed, "Gee, not another cathedral," and promptly re-entered the car. I confess that my immediate reaction was similar when I read the sub-headings to *Collier* v. *Stoneman* [1957] 3 All E.R. 20 (C.A.); they begin "Rent Restriction—Death of tenant—Residing with . . ."; but, as did the more energetic of the tourists referred to above, I decided to proceed. Decisions on the proper interpretation of the interpretation of "tenant" in the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*), are numerous, but the subject is not exhausted; as in the case of cathedrals, new features may present themselves.

In *Collier* v. *Stoneman* the Court of Appeal reversed the decision of the county court judge, who had considered that *Edmunds* v. *Jones*, decided in 1952 and noted in 213 L.T. News. 62, governed his findings. As the older decision was distinguished, it will be convenient to say something about it first.

Edmunds v. Jones

The decision, as the "Notebook" observed on 8th August, 1953 (97 SOL. J. 550), deserves to be better known. It was a claim for possession against the daughter of a deceased statutory tenant who had occupied two rooms in the demised house, sharing the kitchen with her mother. The evidence showed that she had been a sub-tenant of those two rooms (the sharing of the kitchen prevented her from successfully relying on the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (3)). Her contention that she satisfied the definition of "tenant" in s. 12 (1) (*g*): "includes the widow of a tenant who is *residing with* him at the time of his death, or, where a tenant leaves no widow or is a woman, such member of the tenant's family *so residing* as aforesaid as may be decided in default of agreement by the county court" was rejected. In his judgment Evershed, M.R., said that the words "residing with" must be given their ordinary popular significance; that the defendant had been tenant at law of two rooms, of which she had had exclusive possession, and had not resided in any other part of the house; and she had therefore not resided with her mother in the house.

Collier v. Stoneman: Facts

The premises dealt with in the recent case were a flat consisting of two rooms and a kitchen. In 1947 the tenant was a Mrs. *L*, born in 1862. Her granddaughter, the plaintiff in the action, had then become engaged and she and her fiancé had acquired some furniture but no residence. Mrs. *L* allowed them to store the furniture in one of the two rooms and in 1950 (at the suggestion of another daughter of Mrs. *L*) they married and moved into that room. They paid to Mrs. *L* rather more than half the amount of rent payable by her to her landlord, the defendant in the action. They deposed that they and Mrs. *L* usually had meals together in the kitchen, though occasionally Mrs. *L* would cook her own meals on an oil-stove in her room; cooking and shopping were, according to the plaintiff, done by both; according to her, the grandmother "usually cooked for herself," according to her husband, Mrs. *L* usually cooked for all when, at all events, his wife was working. There were separate food cupboards. Coal was at first kept in the same box; in 1953 separate boxes were instituted. Mrs. *L* had her windows cleaned by a professional.

And there was evidence that Mrs. *L* used the kitchen less and less as she grew older; the defendant landlord's wife testified that she usually found Mrs. *L* sitting in her own room and had often seen her cooking her own meals there.

On the death of Mrs. *L* at the age of ninety-four, the defendant asserted his claim to the room occupied by the plaintiff and her husband, and the plaintiff sued for a declaration and damages for trespass.

County court's findings

It is clear that the learned county court judge did not accept all the evidence given by and for the plaintiff, for in his judgment he not only described the deceased grandmother as an old lady of independent habits and way of life, but said that she insisted on her own housekeeping arrangements, bought and ate her own food and had her own larder, may have had an occasional meal with her granddaughter and the latter's husband but mostly not. And, influenced by *Edmunds* v. *Jones*, he held that it was difficult to say that the plaintiff had resided with her grandmother at the time of the grandmother's death: "she was residing with her husband and their child in their matrimonial home which certainly did not include the tenant's room. I was of opinion that, as far as was physically possible in one flat, the granddaughter and her family and the tenant were living totally separate and independent lives, as independent households."

The appeal

In the Court of Appeal, Jenkins, L.J., emphasised the fact that in *Edmunds* v. *Jones* the defendant had been a sub-tenant residing in two rooms of which she had exclusive possession. The county court judge had held that (despite the payments) there had been no sub-letting of the room in *Collier* v. *Stoneman*; in the learned lord justice's view, this seemed to be a vital point of distinction. And, applying the "popular significance" test, Jenkins, L.J., said: "If the tenant had been asked whether anyone resided with her in the flat I do not see how she could consistently with the facts have answered the question otherwise than by saying: 'Yes, my granddaughter, her husband and their son reside with me. They have one of the two bedrooms to themselves, I have the other, and we share the kitchen'." The learned

county court judge had, according to Jenkins, L.J., given the words " residing with " a restricted meaning which did not accord with their " ordinary and popular significance."

Romer, L.J., stressed the absence of any contractual right possessed by the plaintiff, thought that it could not be denied that the granddaughter was residing with her grandmother in the accommodation of which the grandmother was tenant, and considered that there was no justification for an interpretation of the word " with " which would in many cases involve a detailed inquiry into the way of life of persons who were sharing accommodation for the purpose of ascertaining what degree of personal or family association existed between them. This was said in reference to an argument that it was family relationship rather than legal relationship that mattered, it being contended that there was no family relationship at all between the tenant and her granddaughter. Sellers, L.J., likewise found it difficult to see how, without a tenancy of their own, the plaintiff and her husband could be said not to be residing with the grandmother up to the date of her death.

Comment

With great respect, I cannot help feeling that the views taken in the Court of Appeal rather over-simplify this problem of what Romer, L.J., called " co-residence." The learned county court judge had indeed not found that the plaintiff had been a sub-tenant ; indeed, he appears to have negatived the proposition ; but the notion that in the absence of a finding that the claimant has had an exclusive right to occupy part of the property he must be held to be " residing with " the grantor of whatever rights he has seems to be open to question. Does a lodger " reside with " his " landlord " ? In short, I do not feel at all sure that Mrs. *L* would have answered the question suggested by Jenkins, L.J., in the affirmative, or that a reply in the negative would have been inconsistent with the facts.

I would submit that the word " with " in the subsections was not given so restricted a meaning, or a meaning so restricted, as was suggested, and that its significance (popular) *may* call for a detailed inquiry into a way of life which courts of first instance often have to pursue. The mere fact that the grandmother would not have been committing trespass to land if she had walked into the plaintiff's room without knocking does not, I respectfully suggest, mean that the plaintiff was " residing with " her grandmother. Even popularly, " with " is often used to denote something more than physical proximity ; to denote, according to the O.E.D., personal relationship, association, etc. When Burns, a popular poet if there ever was one, wrote the line : " Scots wha hae wi' Wallace bled " he was not suggesting that a number of his countrymen, including the aforesaid Wallace, had happened to attend an out-patients' clinic at the same time (that time being one when blood-letting was considered the remedy for most ills). And I would submit that the county court judge rightly attached the greatest importance to his finding that the plaintiff's grandmother had bought and eaten her own food and had her own larder. " Dwelling," it has been held—*Wright* v. *Howell* (1947), 92 Sol. J. 26 (C.A.)—" includes all the major activities of life, particularly sleeping, cooking and feeding " ; which points to a conclusion that if *A*, occupying accommodation in *B's* house, does not eat with *B*, he does not reside *with B*.

R. B.

HERE AND THERE

PASSING THE WHALE

When I was a small child I used to be enchanted with a jolly little French song called " Le Pendu de St. Germain." It was about a young man who hanged himself for love in a wood. A passer-by, noticing that he was still breathing, prudently thought he'd better go and fetch a policeman, " Peut-être bien qu'il n'est pas mort." That was the refrain of the song. The constable went off to fetch the sergeant. The sergeant went off to fetch the inspector, who organised the rescue. By that time the corpse was blue. I remembered the St. Germain suicide when I read what happened recently in the case of a 30-foot sperm whale washed up on the beach in the Hudson River. The coastguard called the parks department, who called the health department, who called the sanitation department, who called the police department. There, for the moment, the story ends and the whale rests. It is hard to see the logic of calling in the police, who could hardly be expected to arrest the monster for loitering with suspicious intent or for attempting to evade the immigration laws and to enter the United States without first declaring on affidavit that it was not a polygamist and that it did not intend to subvert the constitution by force. After all, you never know. Quite recently, under the heading " Salmon Leap the Iron Curtain," *The Times* published a news item from Moscow to the effect that fifteen salmon carrying markings from the University of Washington's Institute of Fisheries at Seattle had been caught in Soviet waters. Though the report did not say so, these spies, capitalist stooges and North Atlantic hyenas were suitably brain-washed before their roes, under some other name, were served as caviare to the generals of the Red Army. One cannot believe that the Americans would be less vigilant. So maybe it was reasonable to send the police to cope with the whale, lest there was an alien, subversive Jonah lurking in its belly.

THE CORNISH MONSTER

I am sure I must already have told the story of the wartime whale and the Duchy of Cornwall (which I have on the authority of a distinguished High Court judge). After all, this is the Silly Season in which the Loch Ness monster and his colleagues regularly repeat their manifestations, so why shouldn't the Cornish whale repeat himself ? He was washed up on the coast of Cornwall during the war when little labour was available for coping with that particular sort of primitive emergency. Whalemeat cannot yet have become a delicacy recommended by the Ministry of Food or the monster might have attracted favourable attention in Whitehall. But its nutritious possibilities were strangely neglected, even as a new ingredient for Cornish pasties, and it started to decompose, thereby constituting itself a major public nuisance to the dwellers by the shore. But one of them was a lawyer well versed in the historical byways of an island where freedom slowly broadens down from precedent to precedent, and, by his advice, a courtly and correct letter was despatched to the office of the Duchy of Cornwall to appraise the officials that a whale had been stranded on the shore and to request that,

since such creatures were the property of His Majesty the King, His Majesty should dispose of it accordingly. Back came a reply to the effect that, while His Majesty deeply appreciated the generous and loyal attitude displayed, he was content to waive his rights in this valuable piece of jetsam. The dwellers by the sea respectfully rejoined that there could be no question of waiving any inchoate rights in the whale, the whale was here and now the property of His Majesty and please would he graciously dispose of it? So the Duchy's pigeon it was (if one may so describe leviathan), but, dead or alive, it is traditionally difficult to put a hook in his nose.

SACRED TO THE FOUR ELEMENTS

THE salvage firms at Portsmouth had their hands full enough without the extra load of some hundreds of pounds of inert whale blubber, but eventually they found time to commit the whale's body to the deep. However, Neptune's cruel sea would not so readily stand for the rejection of his gift. Besides, not venturing out over far into the hostile perils of the submarine-haunted waters, the salvage people had not gone quite far enough. Back came the whale on the next tide. Active at last, the imagination of the Duchy official was fired with the brightest of ideas. Twice rejected by his native element and cast on to the unfriendly earth, leviathan should invoke the element of fire "and in a great red whirlwind go roaring to the sky." With what must have been incredible ingenuity vast quantities of petrol were collected to saturate the gigantic corpse and set alight so that it blazed like some vast fantastic Christmas pudding. Only then was it realised that, in the utter darkness of the wartime blackout, the pyre was illuminating the entire Cornish coast in the face of the enemy. Almost every fire engine in the Duchy was soon converging on the spot to put it out. So the castaway remained and there was nothing for it but another expedition to sea. This time the committal order was properly executed and full fathom five the incinerated whale sank to an eternal rest.

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 12th SEPTEMBER, 1857

ON the 12th September, 1857, THE SOLICITORS' JOURNAL summarised the provisions of the Divorce Act which for the first time allowed divorce by judicial process: "Divorce *a vinculo* is a subject easier than any other dealt with by the Act to speak of with precision . . . If it is a husband who wishes to dissolve the marriage tie, he must present a petition . . . charging his wife with adultery and making the alleged adulterer a co-respondent. If he please he may also ask for damages from the adulterer and these damages will be assessed by a jury. The demand for damages is entirely in the option of the husband; but if they are asked for and obtained, it is in the power of the court to direct how they shall be applied and to make provision out of them for the wife and children . . . His claim may, in the discretion of the court, be denied if he can be shown to have been guilty of adultery, cruelty or desertion of his wife . . . It is probable that petitions for divorce *a vinculo*, presented by the wife, will be very rare, but there are three grounds on which the dissolution of the marriage tie may be asked for by the wife, which, among the lower orders, very frequently exist; and since suing *in forma pauperis* is to be allowed, it is possible that wives may occasionally claim the assistance of the law. These three grounds are adultery coupled with bigamy, adultery coupled with desertion for two years, and adultery coupled with excessive cruelty. In case a divorce *a vinculo* is granted, the court has power to make such order as it may think proper with respect to the custody, maintenance and education of the children . . ."

TALKING "SHOP"

September, 1957.

Some like "shop" and others "talk," and many do not care for either—a consoling thought for this columnist, for if he could count upon no readers at all he could really let himself go. But seeing that this is September, when readers will be grappling with the alien problems of absent partners and staff (or thankfully resigning their own to the ministration of others), let us have as little "shop" as we decently can. For those requiring a complete change of intellectual scene (and at this time of the year who does not?), there is always *The Oxford Book of Ballads*. What is to be said for detective stories when you can start your holiday in rousing fashion with *Lady Isabel and the Elf-Knight?*

> My plaid awa', my plaid awa',
> And o'er the hill and far awa';
> And far away' to Norrowa',
> My plaid shall not be blown awa'!

For those practitioners of a less lyrical disposition there are the famous border-ballads. By way of preface one may do worse than dip into the second volume of Francis Watt's "The Law's Lumber Room," which contains a chapter, packed with erudition, on the *Leges Marchiarum* or Laws of the Marches—the old Border-law before the Union. Francis Watt's second volume, though not, in my opinion, the equal of the first, is worth acquiring for this chapter alone. True, one may read and enjoy the ballad of Johnie Armstrong of Gilnockie, with its haunting refrain:—

> Away, away, thou traitor strang!
> Out of my sight soon mayst thou be!

and the never changing reply:—

> Grant me my life, my liege, my king!

without caring a straw for it that the Armstrongs and the Elliots were famous disturbers of the Border, or a fig for Mr. Watt's account of James V's famous raid in 1529, for the appeal is sensual rather than intellectual. But when it comes to the ballad of Kinmont Willie, who was taken "against the truce of Border tide" and "between the hours of night and day," it is a help to have learnt from Mr. Watt just how the brief Border truce was kept by the Wardens, what purpose it served and how iniquitous was the seizure of Kinmont Willie "against the truce" and his incarceration in Carlisle. Mr. Watt is also informative on such mysteries as the Bateable (Debateable) Land—a kind of No-Man's Land or buffer State between the two kingdoms of England and Scotland. Long after a joint Commission had divided it, in 1552, between the two kingdoms, the traditional anarchy persisted. So much so that, even after the Union, King James (presumably James I of England—Mr. Watt is not specific) refused to credit

the story of a " homing " cow. " It gravelled him, he confessed, to imagine any four-footed thing passing unlifted through the Debateable Land."

But enough of learning. For conveyancers (who, doubtless, in their methodical way, will start at the beginning and plod through to the end) there is the familiar topic of gifts *inter vivos* as an aperitif at pages 5 and 6 :—

" What gars[1] ye pu' the rose, Janet ?
What gars ye break the tree ?
What gars ye come to Carterhaugh
Without the leave o' me ? "

" Weel may I pu' the rose," she says,
" And ask no leave at thee ;
For Carterhaugh it is my ain,
My daddy gave it me."
(*Tam Lin*)

For the sanguinary and the lawyer in criminal practice there is much and to spare, with murders of kindred in all degrees and of others unrelated. The favourite method was stabbing (very often with " a wee pen-knife "). But pushing the victim into the flood, whether river or sea, was also popular, especially with the ladies. This last was the method adopted by May Colvin, when disposing of false Sir John, but the difficulty was to manœuvre him into a promising position. An appeal to his modesty proved effective, for after he had addressed her in these terms :—

" Cast off, cast off your Holland smock
That's border'd with the lawn,
For it is too fine and costly
To rot in the salt sea foam "—

she suggested that he should look the other way and thus :—

He turn'd himself straight round about
To look to the leaf o' the tree ;
She's twined her arms about his waist
And thrown him into the sea.
(*May Colvin*)

The same method—but with less subtlety—was adopted by the jealous sister in *Binnorie* :—

The youngest stood upon a stane,
The eldest cam' and push'd her in.

(It was just as simple as that.)

See also for murder of sweetheart, *Bonnie Annie ;* of sister's lover, *Clerk Saunders ;* of faithless lover, *Young Hunting ;* of wife's lover, *Old Robin of Portingale ;* of husband's lover (and of bride), *Lord Thomas and Fair Annet* ; of twins (infanticide), *The Cruel Mother ;* of son, *Childe Maurice ;* of sister, *The Cruel Brother*, and of sisters, *Three Sisters ;* of brother, *The Twa Brothers ;* of second wife, *The Laily Worm ;* and of father, *Edward, Edward*. A short and far from comprehensive list.

By and large, the ballads tend to be weak on psychology, but an exception is *Edward, Edward*, which can scarcely fail to satisfy the modern school of psycho-analytical thought. To the material question—

" Why does your brand sae drop wi' blude,
Edward, Edward ? "

the answer, of course, was that he had just slain his father, and we are very cunningly led to suppose that this is also the point of the ballad, but it is not. The point (which, in an era void of psycho-analysts, Edward has to make for himself) is reserved for the final stanza :—

" The curse of hell frae me sall ye bear,
Mither, mither ;
The curse of hell frae me sall ye bear,
Sic counsels ye gave to me, O ! "

But enough of sudden death and psychology and let us turn to allegory. Readers with a taste for it may justly compare the insatiable demands of the " griesly ghost " in *King Henry* with those of the contemporary tax-gatherer, and according to temperament, praise or deplore the resigned compliance of the king as he slew in turn his favourite horse, his greyhounds and his gay goss-hawks :—

O whan he fell'd his gay goss-hawks,
Wow but his heart was sair !
She's ate them a' up skin an' bane,
Left naething but feathers bare.

But some little comfort may seep from the knowledge that this unattractive lady's demands outstripped any that have yet been prayed in aid of the Welfare State :—

" O God forbid," says King Henry
" That ever the like betide,
That ever a fiend that wons[1] in hell
Shou'd streak[2] down by my side ! "

Likewise you may read in *Clerk Colven* no more than the strange story of a young man bewitched by a mermaid ; but you may value it more highly as a near-perfect allegory of the disillusions of life :—

" Ohone, alas ! " says Clerk Colven,
" O sairer, sairer akes my head !
And sairer, sairer ever will
And aye be war[3] till ye be dead."

Then out he drew his shining blade
And thought wi' it to be her deid,
But she's become a fish again,
And merrily sprang into the fleed.

Perhaps the most original and striking of all the ballads is *The Great Silkie of Sule Skerrie*, which may be regarded—without further and murky exploration of the criminal calendar—as a case of mixed bastardy and impersonation. It is the story of the seal-man who was a man on land and a seal, or silkie, at sea ; and like all the best ballads (cf. *Edward, Edward*), the best of the shock is reserved to the last (it is the Silkie's utterance) :—

" An' thu sall marry a proud gunner,
An' a proud gunner I'm sure he'll be,
An' the very first schot that ere he schoots,
He'll schoot baith my young son and me."

Finally we must not ignore current—or not so long past—affairs, for have we not read of late in the press something very like this from *Earl Mar's Daughter ?*

" From whence cam' ye, young man ? " she said,
" That does surprise me sair ;
My door was bolted right secure
What way hae ye come here ? "
" O haud your tongue, ye lady fair . . ."

" Escrow "

[1] makes, causes.

[1] dwells [2] stretch [3] worse.

STAMP DUTY ON CONVEYANCE OR LEASE OF BUILDING SITE

THE following statement by the Board of Inland Revenue of the Board's official view of the *ad valorem* stamp duty chargeable on conveyances or leases of building plots after the commencement of building operations supersedes the previous statement which appeared at 100 SOL. J. 468, and which has been revised in the interests of clarity. The new statement is printed in the *Law Society's Gazette* for August, 1957:—

"The Board have taken legal advice concerning the stamp duty chargeable on conveyances or leases of building plots in cases where at the date of the contract for sale or lease no house has been erected or a house has been partly erected on the site which constitutes or is included in the subject-matter of the sale or lease, and at the date of the conveyance or lease a house has been wholly or partly erected on the site.

The Board are advised that the law is as follows:—

(i) Subject to what is said under para. (iv) below, if under the contract for the sale or lease the purchaser or lessee is entitled to a conveyance or lease of the land in consideration only of the purchase price or rent of the site, the *ad valorem* duty on the conveyance or lease will be determined only by the amount of the purchase price or rent, although it may have been agreed that a house is to be built on the site at the expense of the purchaser or lessee.

In such a case, the concurrent existence of a contract with the vendor or lessor or any other person for the building of a house on the site will not increase the stamp duty chargeable on the conveyance or lease.

(ii) If under the contract the purchaser or lessee is not entitled to a conveyance or lease until a house has been built on the site at his expense and if the house is to be built by the vendor or lessor or by his agent or nominee, the payment of the building price by the purchaser or lessee will be part of the consideration for the conveyance or lease and the building price will be liable to *ad valorem* duty accordingly.

(If the house is to be built by a person who is not the vendor or lessor or his agent or nominee, the payment of the building price will not form part of the consideration for the sale or lease except in so far as para. (iv) below applies.)

(iii) When the position is as in para. (ii) above, and a purchaser or lessee not entitled to a conveyance or lease until a house has been erected at his expense in fact obtains a conveyance or lease when the house has been only partly erected, *ad valorem* duty is payable on the conveyance or lease on the proportionate amount of the building price attributable to the partial erection of the house computed as at the date of the conveyance or lease.

(iv) (*a*) If, at the date of the contract, a house has been wholly or partly erected by the vendor or lessor or by his agent or nominee or by a builder not employed by the purchaser or lessee, it normally forms part of the subject-matter of the sale or lease and the consideration or apportioned consideration for that building (as existing at the date of the contract) is accordingly liable to *ad valorem* duty.

(*b*) If, at the date of the contract, a house has been wholly or partly erected by the purchaser or lessee or by any person on his behalf the consideration or apportioned consideration for the house wholly or partly erected will not normally form part of the consideration for the sale or lease and accordingly will not be liable to *ad valorem* duty.

(*c*) This paragraph is subject to what is said in paras. (ii) and (iii) above.

(v) The contract referred to above may be contained in more than one instrument or it may be partly written and partly verbal. It includes any contractual arrangement between the parties.

These observations explain, so far as is possible in general terms, the view of the law at present adopted by the Board, but they have not, of course, the force of law, and are promulgated merely with the object of assisting the taxpayer. The Board are not bound by them, and the circumstances of any particular case may call for special consideration."

CROWN PROCEEDINGS ACT, 1947: AUTHORISED GOVERNMENT DEPARTMENTS

The Treasury have issued a new list of Authorised Government Departments and the names and addresses for service of the person who is, or is acting for the purposes of the Act as, Solicitor for such Departments, in pursuance of s. 17 of the Crown Proceedings Act, 1947. This list, dated 1st September, 1957, supersedes the list published on 1st May, 1954.

The new list is as follows:—

AUTHORISED GOVERNMENT DEPARTMENTS	SOLICITORS AND ADDRESSES FOR SERVICE
Admiralty Air Ministry Central Land Board Crown Estate Commissioners Ministry of Education Home Office Ministry of Power Prison Commissioners H.M. Stationery Office Ministry of Supply Ministry of Transport and Civil Aviation H.M. Treasury War Damage Commission War Office Ministry of Works	The Treasury Solicitor, 3 Birdcage Walk, St. James's Park, London, S.W.1.
Registrar of Restrictive Trading Agreements	The Treasury Solicitor, Restrictive Practices Branch, Chancery House, Chancery Lane, London, W.C.2.
Ministry of Agriculture, Fisheries and Food Forestry Commission	The Solicitor to the Ministry of Agriculture, Fisheries and Food, Whitehall Place, London, S.W.1.
Commissioners of Customs and Excise	The Solicitor for the Customs and Excise, King's Beam House, Mark Lane, London, E.C.3.
Ministry of Health Board of Control Registrar General	The Solicitor to the Ministry of Health, Savile Row, London, W.1.
Ministry of Housing and and Local Government	The Solicitor to the Ministry of Housing and Local Government, 23 Savile Row, London, W.1.

AUTHORISED GOVERNMENT DEPARTMENTS	SOLICITORS AND ADDRESSES FOR SERVICE
Commissioners of Inland Revenue	The Solicitor of Inland Revenue, Somerset House, London, W.C.2.
Ministry of Labour and National Service	The Solicitor to the Ministry of Labour and National Service, 8 St. James's Square, London, S.W.1.
Ministry of Pensions and National Insurance National Assistance Board	The Solicitor to the Ministry of Pensions and National Insurance, Thames House South, Millbank, London, S.W.1.
Post Office	The Solicitor to the Post Office, Headquarters Building, St. Martin's le Grand, London, E.C.1.
Public Works Loan Board	The Solicitor to the Public Works Loan Board, Bank Buildings, 19 Old Jewry, London, E.C.2.
Board of Trade Custodian of Enemy Property for England The Administrator of Bulgarian Property The Administrator of German Enemy Property The Administrator of Hungarian Property The Administrator of Japanese Property The Administrator of Roumanian Property	The Solicitor to the Board of Trade, Horseguards Avenue, London, S.W.1.
Tithe Redemption Commission	The Solicitor to the Tithe Redemption Commission, Finsbury Square House, 33/37 Finsbury Square, London, E.C.2.

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," 21 Red Lion Street, London, W.C.1, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet.*

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Section 17—Exchange of Dwellings

Q. My client is the owner of a controlled house under the Rent Acts, and the tenant has arranged to take a tenancy of a council house by virtue of an exchange made with the tenant of the council house. The council will consent to this arrangement provided that my client states in writing to it that she is willing to accept the present council house tenant as a tenant of her house. Will the new tenancy be a controlled tenancy or will it be decontrolled so that my client can fix the rent at her discretion ?

A. We gather that the present tenant of the client's house is a statutory tenant, having at some time been given notice to quit or served with notice of increase of rent. If that is so, then the proposed agreement is on the lines set out in s. 17 (1) and (2) of the Act, and the tenancy (whether it should be called " new " is arguable) would be protected and its rent subject to rent control. If the present tenancy is controlled but still contractual, there is really no point in the suggested agreement—except in so far as it would deprive the client of any right to seek possession on the ground provided by the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*d*) (assignment of whole dwelling-house without landlord's consent).

Decontrol—Houses Let in Parts

Q. We have a number of clients who have mortgages on residential properties, which mortgages, at any rate prior to the 6th July, were protected. Assuming that the lettings hereinafter referred to were either in existence when the mortgages were created or, although subsequent thereto, were with the full knowledge and consent of the mortgagee, will the mortgages in the cases set out below become decontrolled under the Act ? None of the properties are in London :—

(1) The rateable value of the whole house exceeds £30, but the mortgagor has let a part comprising a separate dwelling within the meaning of the Acts of which the rateable value would certainly be under £30.

(2) The rateable value of the whole exceeds £30, but it is let by the mortgagor in two or more parts each comprising a separate dwelling, the rateable value of each part being certainly under £30. Would it make any difference if the rateable value of some only of the parts was less than £30 ?

(3) The rateable value of the whole house exceeds £30 and the mortgagor has let the whole to one tenant who, in turn, has sub-let one or more parts of rateable value less than £30.

A. (1) In our opinion, there would be no decontrol. References to rateable value are to be construed, when premises form part of a hereditament, as references to the apportioned rateable value : Sched. V, para. 1 (*b*). The mortgaged property, therefore, includes a dwelling-house to which the Rent Acts apply (Increase of Rent, etc., Restrictions Act, 1920, s. 12 (4)).

(2) The same applies and, as regards the second sentence, *Re Dunn's Application* (1920), 149 L.T. News. 215, showed that the Acts applied in such circumstances.

(3) Again, the parts sub-let would be dwelling-houses to which the Rent Acts applied.

Decontrol—Whether Mortgagee is Landlord for Purpose of Form S

Q. Property let and within the scope of the Rent Acts has for many years been mortgaged to *A* and *B*. In 1938, mortgage interest was in arrear and after negotiations the

mortgagor authorised agents to collect the rents of the property and manage them and to pay the balance available from time to time to *A* and *B*. Owing to the war, the continuity of rent was affected and the arrears of mortgage interest increased. Contact was also lost with the mortgagor until 1947, when an inquiry was received from her. As a result of correspondence, it was clear that she had no assets to fund the mortgage arrears and, as no purchaser for the property could be found, the subsisting arrangements were allowed to continue. In 1950, the mortgagor died leaving no will and no next of kin. The Crown solicitors, being satisfied that there was no equity in the property and no other assets, declined to take a grant to her estate. By the Rent Act, 1957, the property is freed from control and it is desired to know who is " the landlord " for the purpose of Form S.

A. In our opinion, the position depends on whether the tenants have recognised the agents as agents of the mortgagee. If so, the mortgagee should sign Form S, relying on the tenants being estopped from denying his title (see *Jolly* v. *Arbuthnot* (1859), 4 De G. & J. 224; *Duke* v. *Ashby* (1862), 7 H. & N. 600; *Morton* v. *Woods* (1869), L.R. 4 Q.B. 293). But if the rent has been collected on behalf of a non-existent principal, authority having in fact determined on the death of the mortgagor in 1950, we do not think that possession could be recovered by the mortgagee.

Defects of Repair—Responsibility of Landlord

Q. I act for the landlord of a house which remains controlled under the new Rent Act. There is no formal written agreement, and the landlord is treated as being responsible for repairs other than internal decorations. After being served with a notice of rent increase, the tenant has served Form G requiring the landlord to repair gate posts and boundary fences, and to make good a garden path. Am I correct in maintaining that the landlord is not responsible for the carrying out of these repairs, which in my view do not come within the provisions of the Rent Act ?

A. The Act does not define disrepair, and it is left, in our opinion, to the local authority in the first instance, and eventually to the county court (on an application under Sched. I, para. 4 (5)), to decide whether any defect " ought reasonably to be remedied." We do not think that it could be said that gate posts, boundary fences, or a garden path are not parts of the " dwelling," but consider that it could be argued that, having regard to the character of the house, the defects are not such as ought to be remedied by the landlord. Some use might, in our opinion, be made of the judgment of Denning, L.J. (as he then was), in *Warren* v. *Keen* [1954] 1 Q.B. 15.

Notice of Increase—Statement of Rent Payable—Tenant Paying Rates Direct

Q. We act for Mrs. *A*, who has been the tenant of a dwelling-house since 1938. The rateable value in 1938 was £28 and it remains so at the present time, the gross value being £38. The original rent was 15s. per week inclusive of rates. Although no statutory notice in respect of the amounts by which the rates had from time to time increased had been served, Mrs. *A* agreed to pay a further 2s. 6d. per week in respect of increased rates in 1947. In 1954, the landlord got Mrs. *A* to agree to pay the rates direct, and from that time the demand note has been sent by the local authority to Mrs. *A*. In consideration of Mrs. *A* paying the rates herself direct, it was agreed between the landlord and Mrs. *A* that the rent she should pay to the landlord should be 12s. 3d. per week. Mrs. *A* consulted us on receiving a notice of increase of rent under the Rent Act, 1957, on which notice the rent payable is stated to be 12s. 3d. per week. It is our contention that the recoverable rent at present is 15s. less a sum equivalent to the liability for rates as it stood at the date of the transfer of the liability for payment of rates in 1954 (*Woodside House (Wimbledon)* v. *Hutchinson* [1950] 1 K.B. 182). Since the rates in 1954 amounted to 9s. 6d. per week, we contend that the rent lawfully payable at present to the landlord is 5s. 6d. per week. We hesitate to raise this point with the landlord in view of the fact that this figure of 5s. 6d. per week is less than two-thirds of the rateable value of the house. It appears to us, however, that the appropriate day on which the rent must be equal to two-thirds of the rateable value for the tenancy to be protected is the 1st April, 1939. We shall be glad to have your views on the above and, if our assumption in the foregoing paragraph is correct, whether the " rent payable " in 1939 was 15s. per week or 15s. per week less the weekly amount of rates.

A. The question whether Mrs. *A* has been paying more than the recoverable rent and the question of the amount to which rent can (if at all) be increased should, in our opinion, be treated as separate and distinct questions. The 1957 Act authorises a rent calculated by reference to rateable value, liability for repairs, and liability for rates; the actual amount of rent payable (though it has to be specified in the notice of increase) is not a factor. For the purposes of ascertaining the rent limit, the old standard rent is, in our view, immaterial. We consider, in fact, that the standard rent was 15s. a week; no deduction should be made (*Westminster and General Properties and Investment Co.* v. *Simmons* (1919), 35 T.L.R. 669). We accordingly agree that the terms of the 1954 bargain led to overpayments, two years' excess payments being recoverable by Mrs. *A* (Rent, etc., Restrictions Act, 1923, s. 8 (2), amended by Increase of Rent, etc. (Restrictions) Act, 1938, s. 7 (6)).

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The Rent Acts 1920–1957. By Norman C. Abbey. pp. xxiii and (with Index) 368. 1957. London: Eyre & Spottiswoode, Ltd. £2 2s. net.

An Index to The Conveyancer and Property Lawyer, Volumes 1–20. By Clifford Walsh, LL.M., Solicitor of the Supreme Court. pp. 258. 1957. London: Sweet & Maxwell, Ltd. £1 5s. net.

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Elements of Credit Insurance. An International Survey. By Hans Karrer, Dr. jur., Advocate, Zürich. pp. vi and (with Index) 194. 1957. London: Sir Isaac Pitman & Sons, Ltd. £2 5s. net.

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Ryde's Rating Cases 1956–57. Volume I. Edited by MICHAEL E. ROWE, C.B.E., M.A., LL.B., of Gray's Inn and the Inner Temple, one of Her Majesty's Counsel, HAROLD B. WILLIAMS, LL.D., of the Middle Temple, one of Her Majesty's Counsel, and DAVID WIDDICOMBE, M.A., LL.B., of the Inner Temple, Barrister-at-Law. pp. xii and (with Index) 404. 1957. London: Butterworth & Co. (Publishers), Ltd.

Hobson's Local Government. Third Edition. By PETER DOW, M.A. (Cantab.), of the Middle Temple and the South Eastern Circuit, Barrister-at-Law. pp. lxxiii and (with Index) 632. 1957. London: Shaw & Sons, Ltd. £2 17s. 6d. net.

The Rent Acts Manual. By ASHLEY BRAMALL, M.A. (Oxon), of the Inner Temple, Barrister-at-Law. pp. xxxi and (with Index) 449. 1957. London: Sweet & Maxwell, Ltd. £1 17s. 6d. net.

The Overseas Trade Corporation and other provisions of the Finance Act, 1957. pp. vii and 39. 1957. London: Federation of British Industries. 4s. net.

County Court Notebook. Seventh Edition. By ERSKINE POLLOCK, LL.B., Solicitor (Honours). pp. 28. 1957. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

Contract for Sale of Land and the Title to Land. Second Edition. By W. J. WILLIAMS, B.A., of Lincoln's Inn, Barrister-at-Law. pp. clxiii and (with Index) 871. 1957. London: Butterworth & Co. (Publishers), Ltd. £4 15s. net.

The Law of Wills. Fifth Edition. By S. J. BAILEY, M.A., LL.M., of the Inner Temple, Barrister-at-Law. pp. lii and (with Index) 331. 1957. London: Sir Isaac Pitman & Sons, Ltd. £2 10s. net.

Restrictive Trade Practices and Monopolies. By ANDREW MARTIN, Ph.D. (Lond.), of the Middle Temple and Inner Temple, Barrister-at-Law. pp. xii and (with Index) 264. 1957. London: Routledge & Kegan Paul, Ltd. £1 10s. net.

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Agricultural Goods and Services (Marginal Production) Scheme (England and Wales) (Amendment) Order, 1957. (S.I. 1957 No. 1543.) 5d.

Agricultural Goods and Services Scheme (England and Wales) (Amendment) Order, 1957. (S.I. 1957 No. 1542.) 5d.

Agriculture (Provision of Goods) Extension of Period Regulations, 1957. (S.I. 1957 No. 1512.) 5d.

British Guiana (Appeals) Order in Council, 1957. (S.I. 1957 No. 1527.) 5d.

Dennyloanhead — Kincardine — Kircaldy — St. Andrews Trunk Road (Bordie Diversion) Order, 1957. (S.I. 1957 No. 1567 (S. 77).) 5d.

Double Taxation Relief (Estate Duty) (Pakistan) Order, 1957. (S.I. 1957 No. 1522.) 7d.

Import Duties Exemptions (No. 11) Order, 1957. (S.I. 1957 No. 1515.) 5d.

London—Edinburgh—Thurso Trunk Road (Water Newton and Wansford Station Diversions) Order, 1957. (S.I. 1957 No. 1547.) 5d.

Safeguarding of Industries (Exemption) (No. 7) Order, 1957. (S.I. 1957 No. 1516.) 5d.

Stopping up of Highways (City and County Borough of Birmingham) (No. 5) Order, 1957. (S.I. 1957 No. 1517.) 5d.

Stopping up of Highways (County of Buckingham) (No. 5) Order, 1957. (S.I. 1957 No. 1518.) 5d.

Stopping up of Highways (County of Derby) (No. 17) Order, 1957. (S.I. 1957 No. 1508.) 5d.

Stopping up of Highways (County of Durham) (No. 7) Order, 1957. (S.I. 1957 No. 1545.) 5d.

Stopping up of Highways (County of Essex) (No. 18) Order, 1957. (S.I. 1957 No. 1519.) 5d.

Stopping up of Highways (County of Lancaster) (No. 21) Order, 1957. (S.I. 1957 No. 1509.) 5d.

Stopping up of Highways (County of Lincoln, Parts of Lindsey) (No. 4) Order, 1957. (S.I. 1957 No. 1540.) 5d.

Stopping up of Highways (County Borough of Middlesbrough) (No. 1) Order, 1957. (S.I. 1957 No. 1520.) 5d.

Stopping up of Highways (County of Nottingham) (No. 11) Order, 1957. (S.I. 1957 No. 1521.) 5d.

Stopping up of Highways (City and County Borough of Sheffield) (No. 6) Order, 1957. (S.I. 1957 No. 1535.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 14) Order, 1957. (S.I. 1957 No. 1510.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 15) Order, 1957. (S.I. 1957 No. 1536.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 16) Order, 1957. (S.I. 1957 No. 1539.) 5d.

Wages Regulations (Coffin Furniture and Cerement Making) (Amendment) Order, 1957. (S.I. 1957 No. 1557.) 5d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. Prices stated are inclusive of postage.]

NOTES AND NEWS

Miscellaneous

DEVELOPMENT PLANS

COUNTY OF CUMBERLAND DEVELOPMENT PLAN

On 26th June, 1957, the Minister of Housing and Local Government amended the above development plan. The amendment to the plan relates to land situate within the Borough of Whitehaven. A certified copy of the plan as amended by the Minister has been deposited at Town Hall, Whitehaven, and The Courts, Carlisle. The copies of the plan so deposited will be open for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. Mondays to Fridays inclusive and 9 a.m. and 12 noon on Saturdays. The amendment became operative as from 22nd August, 1957, but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment he may, within six weeks from 22nd August, 1957, make application to the High Court.

DEVELOPMENT PLAN FOR THE ISLE OF WIGHT

Proposals for alterations or additions to the above development plan were on 23rd August, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the undermentioned districts: The Borough of Newport, the Urban District of Cowes and the Rural District of the Isle of Wight. A certified copy of the proposals as submitted has been deposited for public inspection at Hazards House, High Street, Newport, I.W., and certified copies of the

proposals or certified extracts thereof have also been deposited for public inspection at the places listed below: The Town Clerk's Office, 17 Quay Street, Newport, I.W., the Clerk's Office, Northwood House, Cowes, I.W., and the Clerk's Office, Isle of Wight Rural District Council, 30 Pyle Street, Newport, I.W. The copies or extracts of the proposals so deposited at the places mentioned above together with copies of relevant extracts of the plan are available for inspection free of charge by all persons interested, during the usual office hours. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 11th October, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Isle of Wight County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

COUNTY OF MIDDLESEX DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 12th August, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate in or near the following roads or streets within the Borough of Southgate, in the County of Middlesex: Albert Street, Alexandra Road, Bowes Road, Cross Road, Curtis Road, Friern Barnet Road, Garfield Road, Grove Road, High Road, Hive Cottages, Lee Street, Limes Avenue, Lower Park Road, Palmers Road, Park Cottages, South Road, Springfield Road, Station Road, Upper Park Road, Victoria Mews, and Woodland Road. Certified copies of the proposals as submitted have been deposited for public inspection at the Town Hall, Palmers Green, N.13, and also in the County Planning Department, No. 10 Great George Street, Westminster, S.W.1. The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10 a.m. and 4.30 p.m. on Mondays to Fridays, and 9.30 a.m. and 12 noon on Saturdays (except in the case of the copy deposited in the County Planning Department which will not be open for inspection on Saturdays). Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 18th October, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Clerk of the Middlesex County Council, Guildhall, Westminster, S.W.1, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

The address of the Export Licensing Branch of the Board of Trade is now Gavrelle House, 14 Bunhill Row, London, E.C.1. (Telephone: MONarch 4071, Telegraphic address: Explic, Cent, London.) The nearest underground stations are Moorgate and Old Street. Bus routes serving Bunhill Row are (along Old Street) Nos. 170, 543, 555, 565, 567, 643, 665; and (along City Road) Nos. 43, 76, 609, 611, 615, 639, 641, 683.

SOCIETIES

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

The Association will provide during Michaelmas and Hilary Terms, 1957–58, two courses of instruction in litigation and elementary conveyancing for junior clerks.

These courses will enable the students to prepare themselves for the award of the Association's certificate of proficiency.

The lectures will, with the kind permission of the Lord Chief Justice, be given in his lordship's court at the Royal Courts of Justice, commencing Monday, 30th September, and Wednesday, 2nd October, 1957.

Full particulars may be obtained on application to the Hon. Secretary of Students' Lectures, at the office of the Association, Maltravers House, Arundel Street, Strand, London, W.C.2.

PRACTICE NOTE

JUDICATURE FEE STAMPS

On and after 1st October, 1957, all Probate and Divorce Fees in the Principal Probate Registry and the Divorce Registry will be payable by IMPRESSED Judicature Fee Stamps.

The use of ADHESIVE stamps in payments of fees will be discontinued.

B. LONG,
Senior Registrar,
Principal Probate Registry.

26th August, 1957.

CASES REPORTED IN VOL. 101

6th July to 31st August, 1957

For cases reported up to and including 29th June, see Interim Index

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